

Before the National Company Law Tribunal

Bench, at Mumbai

CSA No. 957 of 2017

Under Sections 230 read with Section 232 of the Companies Act, 2013

In the matter of Scheme of Arrangement and Amalgamation of S.V. Shah Constructions Private Limited (**'the First Applicant Company/ Transferor Company'**) with Rabale Engineering (India) Private Limited (**'the Second Applicant Company / Transferee Company'**) and their respective Shareholders and Creditors.

S.V. Shah Constructions Service Private Limited

.....First Applicant Company/Transferor Company

Rabale Engineering (India) Private Limited

.... Second Applicant Company/Transferee Company

Judgement / Order delivered on 14th December, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Rahul R. Mahajan a/w Mr. Amit Surve, i/b M/s. Fortitude Law Associates, Advocates for the Applicant Company.

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

1. The Learned Counsel for the Applicants state that the present Scheme of Arrangement and Amalgamation of S.V Shah Constructions Services Private Limited (**'the First Applicant Company/ Transferor Company'**) with Rabale Engineering (India) Private Limited (**'the Second Applicant Company / Transferee Company'**) with their respective

Shareholders and Creditors under the provision of Sections 230 read with Section 232 of the Companies Act, 2013.

2. The Learned Counsel for the Applicants state that the First Applicant Company is engaged in the business of Designing, procuring, constructing, commissioning and / or managing all works along with the business of buying, selling and otherwise dealing in land or buildings or flats or tenements or residential, commercial industrial premises and to undertake building and structural construction work of all kinds.
3. The Learned Counsel for the Applicants state that the Second Applicant Company is engaged in the business of engineers, founders, smelters, fabricators, smiths, metallurgists and chromium platers, polishers, painters in smiths, locksmiths, iron mongers, alloy makers and machinist and manufactures of and dealers in machinery, tools, instruments and equipments of all kinds used in mining, refining, manufacturing and processing.
4. The Learned Counsels for the Applicants state that the amalgamation of the Transferor Company with the Transferee Company will consolidate the equity shareholding of Pradeep Metal Limited. It will reduce the managerial overlaps involved in operating multiple entities; ease and increase operational and management efficiency; integrate business functions, eliminate duplication and rationalization of administrative expenses. Also, the Transferor Company and the Transferee Company are private limited companies whose shareholding is closely held. Hence, the proposed Scheme of Amalgamation shall not prejudicially or adversely affect the interest of any person or the public at large. The Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the amalgamation of the entire Undertaking and business of the Transferor Company with the Transferee Company in order to benefit the stakeholders of the companies concerned.
5. A meeting of the Equity Shareholders, of the Transferor Company be convened and held at PAP-R-302 – 305, MIDC, Rabale Navi Mumbai, Mumbai 400701, Maharashtra, India, on January 24, 2018 at 10:00 a.m., for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of

Arrangement and Amalgamation of S.V. Shah Constructions Services Private Limited with Rabale Engineering (India) Private Limited and their respective shareholders.

6. A meeting of the Preference Shareholders, of the Transferor Company be convened and held at PAP-R-302 – 305, MIDC, Rabale Navi Mumbai, Mumbai 400701, Maharashtra, India, on January 24, 2018 at 11:00 a.m., for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement and Amalgamation of S.V. Shah Constructions Services Private Limited with Rabale Engineering (India) Private Limited and their respective shareholders.
7. At least 30 (thirty) clear days before the said meetings of the Equity Shareholders and Preference Shareholders, of the Transferor Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Equity Shareholder and Preference Shareholders of the Transferor Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders and Preference Shareholders as per the records of the Transferor Company.
8. The Notice of the Equity Shareholders and Preference Shareholders Meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
9. Mr. Pradeep Vedprakash Goyal, Director of the Transferor Company, and failing him, Mrs. Neeru Goyal, Director of the Transferor Company shall be appointed as the Chairperson for the meetings of Equity Shareholders and Preference Shareholders.
10. A meeting of the Equity Shareholders, of the Transferee Company be convened and held at PAP-R-302 – 305, MIDC, Rabale Navi Mumbai, Mumbai 400701,

Maharashtra, India, on January 24, 2018 at 2:00 p.m., for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement and Amalgamation of S.V. Shah Constructions Services Private Limited with Rabale Engineering (India) Private Limited and their respective shareholders.

11. A meeting of the Preference Shareholders, of the Transferee Company be convened and held at PAP-R-302 – 305, MIDC, Rabale Navi Mumbai, Mumbai 400701, Maharashtra, India, on January 24, 2018 at 3:00 p.m., for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement and Amalgamation of S.V. Shah Constructions Services Private Limited with Rabale Engineering (India) Private Limited and their respective shareholders.
12. At least 30 (thirty) clear days before the said meetings of the Equity Shareholders and Preference Shareholders, of the Transferee Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Equity Shareholder and Preference Shareholders of the Transferee Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders and Preference Shareholders as per the records of the Transferee Company.
13. The Notice of the Equity Shareholders and Preference Shareholders Meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.
14. Mr. Om Prakash Agarwal, Director of the Transferee Company, and failing him, Mrs. Neeru Goyal, Director of the Transferee Company shall be appointed as the Chairperson

for the meetings of Equity Shareholders and Preference Shareholders. The Scrutinizer for the meeting shall be Mr. Hardik Savla, Practicing Company Secretary. For the said services the remuneration is fixed at Rs. 10,000.

15. The Applicant Companies undertakes to:

- i. issue notice convening meeting of the equity shareholders as per Form No. CAA. 2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014;
- iv. advertise the Notice convening meeting as per Form No. CAA. 2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

16. The quorum for the aforesaid meetings of the Equity Shareholders and Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

17. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the meeting, is filed at its Registered Office of the Transferor and Transferee Company at 171/172, Tower A, 17th Floor, Kalptaru Horizon, S. K. Ahire Marg, Worli, Mumbai 400 018, Maharashtra, India and PAP-R-302 – 305, MIDC, Rabale Navi Mumbai, Mumbai 400701, Maharashtra, India respectively, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The value and number of the shares of each member shall be in accordance with the books/ register of the Transferor and Transferee Company and where the entries in the books / register are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

19. The Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within 15 (Fifteen) working days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The Learned Counsel for the Applicants state that there are no Secured Creditors in the Transferor Company as stated in the averments made in paragraph 17 of the Application therefore the question of giving notice of the meeting to Secured Creditors of the First Applicant Company does not arise.
22. That Counsel for Transferor Company submits that since the Scheme is an Arrangement between the Transferor Company involved in the Scheme and its shareholders and only meetings of the Equity Shareholders and Preference Shareholders of the Transferor Company is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Transferor Company to issue notice to all its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the Transferor Company.
23. There are no Secured Creditors in the Transferee Company as stated in the averments made in paragraph 20 of the Application therefore the question of giving notice of the meeting to Secured Creditors of the Second Applicant Company does not arise.
24. That Counsel for Transferee Company submits that since the Scheme is an Arrangement between the Transferee Company involved in the Scheme and its shareholders and only meetings of the Equity Shareholders and Preference Shareholders of the Transferee Company is proposed to be held in accordance with the provisions of Section 230(1)(b) of

the Companies Act, 2013. This bench hereby directs the Transferee Company to issue notice to all its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the Transferee Company.

25. The Transferor and Transferee Company to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 (thirty) days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. The Transferor and Transferee Company to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 (thirty) days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Transferor and Transferee Company to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Transferee Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 (thirty) days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. The Transferor Company to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Chartered Accountant, M/s. Patil Ranadive & Associates with remuneration of Rs. 25,000/- for the services. If no response is received by the concerned Office of the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
29. The Transferor and Transferee Company to file an affidavit of service of notices issued to Creditors not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy,
Member (T)

Sd/-

B.S.V. Prakash Kumar
Member (J)